

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE APPLICATION OF OLEGS FILS,
Petitioner.

Case No. [20-mc-80176-EMC](#)

ORDER GRANTING MOTION FOR *DE NOVO* DETERMINATION OF DISPOSITIVE MATTER

Docket No. 8

On October 2, 2020, Petitioner Olegs Fils filed an *ex parte* application for leave under 28 U.S.C. § 1782 to seek discovery from several third-party merchants in this district for use in a civil proceeding in Latvia, where Mr. Fils is the claimant (the “Latvia Action”). *See* Docket No. 2 (“*Ex Parte App.*”).¹ On October 14, 2020, Magistrate Judge Nathanael Cousin issued a report and recommendation recommending that this Court deny Mr. Fils’s *ex parte* application. *See* Docket No. 6 (“Report”). Shortly thereafter, Mr. Fils filed the pending motion for *de novo* determination of his *ex parte* application, pursuant to 28 U.S.C. § 636(b)(1)(C), Federal Rule of Civil Procedure 72(b)(2), and Civil Local Rules 7-2 and 72-3. *See* Docket No. 8 (“Mot.”).

Judge Cousins first correctly determined that Mr. Fils’s application satisfied § 1782’s statutory requirements because (1) the Merchants are located in this district, (2) the discovery Mr. Fils seeks is for use in a foreign legal proceeding, and (3) Mr. Fils is an interested person in the Latvia Action because he is the claimant. *See* Report at 2. Judge Cousins then concluded that Mr.

¹ Specifically, Fils applies for the issuance of subpoenas to: (1) Specialized Helicopters, Inc.; (2) the Hyatt Corporation; (3) the Hyatt Carmel Highlands (also known as Highlands Inn, Inc.); (4) Burst + Bloom; (5) SommPicks, LLC; (6) Benchmark Wine Group, Inc.; and (7) Belmont Wine Exchange, LLC (collectively, the “Merchants”). *See Ex Parte App.* at 1.

Fils’s application satisfies three out of the four factors the Supreme Court identified in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 264 (2004), for determining if discovery sought in a foreign proceeding is appropriate: (1) the evidence sought from the Merchants is not obviously within the Latvian court’s jurisdictional reach; (2) there is no indication that the Latvian court would not be receptive to discovery assistance by a United States court; and (3) the request does not conceal an attempt to circumvent foreign proof-gathering restrictions or other policies of a foreign country or the United States. *See* Report at 2–3.

Judge Cousins concluded, however, that the fourth *Intel* factor—whether the discovery sought is unduly intrusive or burdensome—was not satisfied because “the proposed subpoenas are grossly overbroad and [Mr.] Fils and his counsel have not taken reasonable steps to avoid imposing undue burden and expense on the [Merchants].” Report at 3. Presumably to address this problem, Mr. Fils also filed with this Court an administrative motion to augment the record pursuant to Civil Local Rules 7-11 and 72-3(b) to included proposed revised versions of the seven subpoenas that Judge Cousins determined were grossly overbroad and burdensome. *See* Docket Nos. 9 (“Admin. Mot.”) at 1; & 9-1 (Decl. of Joseph R. Ashby), Exs. 18–24. Therefore, the only question before this Court is whether the proposed revised subpoenas are sufficiently narrow to satisfy the fourth *Intel* factor.

Having reviewed the changes Mr. Fils made to the proposed revised subpoenas, the Court concludes that those revised subpoenas are sufficiently narrow to satisfy the fourth *Intel* factor. Accordingly, Mr. Fils’s motion for *de novo* determination and administrative motion to augment the record are **GRANTED**. Mr. Fils’s *ex parte* application for the issuance of the revised subpoenas is also **GRANTED**. The Court notes, however, that nothing in this order precludes the

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1 recipients of those subpoenas from moving to quash or modify any of the revised subpoenas
2 pursuant to Federal Rule of Civil Procedure 45(d)(3).

3 This order disposes of Docket Nos. 1, 6, 8, and 9.

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5 **IT IS SO ORDERED.**

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7 Dated: January 11, 2021

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10 EDWARD M. CHEN
11 United States District Judge